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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,775	01/16/2004	Maria Masae Kulas	CJK-14	8139
36707	7590	01/28/2008		
CHARLES J. KULAS 651 ORIZABA AVE. SAN FRANCISCO, CA 94132				
EXAMINER				
HAYES, KRISTEN C				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
01/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/759,775

Applicant(s)

KULAS, MARIA MASAE

Examiner

Kristen C. Hayes

Art Unit

3643

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
- Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first, second and third attachment portions must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. Claims 12-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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3. In claim 12, line 1, the language of "for encircling vegetation" implies that the claim is claiming the subcombination of an apparatus. However, the language of lines 12-13 of "encircles the vegetations" implies that the claim is claiming the combination of an apparatus and vegetation. The claim is indefinite because it is not known if Applicant is claiming the combination or subcombination. For this office action Examiner considers Applicant to be claiming the subcombination of an apparatus.
4. In claim 12, line 9, the claim recites the limitation of "driving a bottom end of each stake's elongated rod into the ground". In the specification and drawings of the application the protruding end of the stake is driven into the ground, not the elongated rod, which is used to connect the stakes.
5. Claim 12 recites the limitation "the bottom ends" in line 10. There is insufficient antecedent basis for this limitation in the claim.
6. Claims 13, 15 and 16 recite the limitation "the supporting stake". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Sinning US 1,925,467.
9. As to claim 12, Sinning discloses an apparatus capable of encircling vegetation with a windscreen (7 of Fig. 1), the windscreen including first and second stakes (8, 1 of Fig. 1),

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wherein each stake includes an elongated rod (1), wherein the elongated rod of each stake is fixedly attached (attached through upper 5 and 6 of Fig. 1) to an elongate flexible sheet (7 of Fig. 1), wherein the first and second stakes are perpendicular to a direction of elongation of the flexible sheet (shown in Fig. 1) and are separated by at least a portion of the flexible sheet along the direction of elongation (see Fig. 1), wherein each stake is suitable for being vertically supported by ground by manually driving a bottom end (8) of each stake's elongated rod into the ground (as best understood), the apparatus comprising first and second attachment portions for receiving the bottom ends (as best understood) (region of 1 that abuts 5 in Fig. 4 for the stakes (1)) for attaching the first and second stakes so that the stakes are held adjacent two and substantially parallel to each other, so that the flexible sheet is capable of encircling the vegetation in a substantially complete loop to form an enclosure that is substantially closed around the sides and open at the top (see Fig. 1); and, a third attachment portion (2 of Figs. 1 and 4) coupled to the first and second attachment portions (shown in Fig. 1), wherein the third attachment portion allows mounting of the apparatus to a third stake (seen in Fig. 1) (through element 2, element 8 is mounted to the rest of the apparatus).

10. As to claim 13, Sinning further discloses the first and second stakes above and parallel to the supporting stake (Figs. 1, 2, and 4).

11. As to claim 14, Sinning further discloses the stakes held substantially in-line with the supporting stake (shown in Fig. 2).

12. As to claim 15, the limitations of claim 12 are disclosed as described above. Not disclosed is the apparatus integral with the supporting stake. Sinning, however, discloses that at three corners the bars are connected by bolts (from col. 2 lines 80-90). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Sinning by making the bars integral and not bolted so as to strengthen the apparatus.

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13. As to claim 16, Sinning further discloses the apparatus removably coupled to the supporting stake (form 12 and 13' of Fig. 4).
14. As to claim 17, Sinning further discloses an attachment portion (23 of Fig. 1) including a hole (shown in Fig. 1 in that 23 surrounds 1) capable of receiving an end of a stake.
15. As to claim 18, Sinning further discloses the apparatus capable of being rolled in the direction of the flexible sheet to form a roll for storing (in that sheet and apparatus are considered a roll when collapsed).
16. As to claim 19, Sinning further discloses the apparatus when unrolled can be cut (sheet can be cut) in a transverse direction of the sheet during a dispensing operation.

Response to Arguments

17. Applicant's arguments filed 26 October 2007 have been fully considered but they are not persuasive.
18. In response to the applicant's argument that Sinning does not disclose the elongated rod or each stake being manually driven into the ground by the bottom end of each stake's elongated rod, Sinning does in fact disclose these elements, as best understood and discussed above.
19. Regarding the applicant's argument that the elongated rod is not fixedly attached to the flexible sheet, the examiner considers the flexible sheet to be fixedly connected to the elongated rod by the connection of elements 2, 3, 4, and 5.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
22 January 2008

Peter Poon
Examiner
Art Unit 3643

/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643